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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,617	04/08/2004	Sam Jackson Kelley	20010.00002	8646

41804 7590 09/11/2006

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EXAMINER
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CHIU, RALEIGH W

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/820,617

Applicant(s)

KELLEY ET AL.

Examiner

Raleigh Chiu

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-10 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC §§ 102 and 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Walenta (USPN 697,574) as applied in the previous Office action.

Figure 1 of Walenta shows a playing surface A. Pins H correspond to the recited marker. Outer pillars E (point values 10,15,25) correspond to the recited outer scoring area. Inner pillar E (point value 100) corresponds to the recited inner scoring area. Pins F correspond to the recited game pole. Balls G are inherently capable of being place on top of the game pole as well as inherently capable of being pitched or bowled at the pillars.

Applicant argues that Walenta lacks an inner scoring area. However, as recited in the previous Office action, inner pillar E (point value 100) is considered to correspond to the recited inner scoring area. Regarding the limitation that the inner scoring area has a perimeter, the circumference of the inner pillar is considered to define a perimeter.

Applicant argues that Walenta lacks a marker. However, Figure 1 is considered to show marker H at the top-holder D end (as opposed to the target pins F end) to meet the limitation of claim 1.

Applicant argues that Walenta lacks game balls for pitching or rolling. However, as stated in the previous Office action, the Walenta balls G are inherently capable of being pitched or bowled. Although applicant states that this is counterintuitive, it is noted that the claims are drawn to apparatus claims and the Walenta balls G fully meet the claimed limitations.

3. Claims 2-5 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walenta for the reasons set forth in the previous Office action.

Regarding claims 2 and 10, the use of scoreboards with games involving points is old and well-known in the art.

Regarding claims 3 and 5, although Walenta only shows one inner pillar, discovering an optimum value of a result effective variable has been held to be within the capabilities of the person of ordinary skill in the art. It would have been obvious to a person having ordinary skill in this art, by routine experimentation, to provide the game with any number of scoring targets in order to increase the opportunity for scoring.

Regarding claims 4, 8 and 9, it would have been obvious to one of ordinary skill in the art to use differently colored balls based on their point value.

Regarding claim 7, It would have been an obvious matter of design choice to modify the Walenta reference by having differently colored poles in order to further differentiate the point values associated with each pole.

Regarding applicant's argument that the "Examiner fails to provide any basis for why one [sic, would] modify the game table of Walenta to include" (Remarks, page 7) the changes of multiple inner pillars, differently colored balls and poles, such bases are clearly set forth in the previous Office action. Specifically, see paragraph 8 on pages 4-5. Where the combination is unpatentable under 35 USC 103, it is not necessary that the prior art suggest the same combination to achieve the same advantage or result discovered by applicant.

#### ***Response to Arguments***

4. Applicant's arguments filed 09 June 2006 have been fully considered but they are not persuasive.

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***Allowable Subject Matter***

5. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

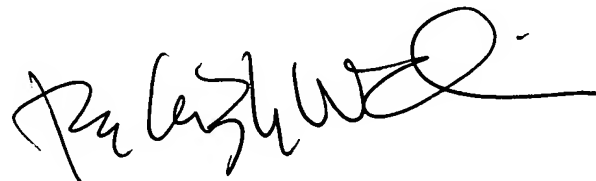
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (571) 272-4408. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim, can be reached on (571) 272-4463.

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in dark ink, appearing to read 'Raleigh W. Chiu', with a stylized flourish at the end.

Raleigh W. Chiu  
Primary Examiner  
Technology Center 3700

RWC:dei:feif

1 September 2006